

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID J. CATANZARO,

Plaintiff,

VS.

WALMART STORES, INC.,
WALMART.COM,
ALIEXPRESS,
MICHAELS STORES, INC.,
MSPCI,
WEGMANS FOOD MARKETS, INC.,
AMAZON.COM, INC.,
DIAMOND VISION INC.,
CURRENT MEDIA GROUP INC.,
USIMPRINTS,
STAPLES PROMOTIONAL PRODUCTS,
RAKUTEN AMERICAS,
PRICE US WHOLESALE,
BONANZA.COM, INC.,
WHOLESALE IN MOTION GROUP, INC.,
ANYPROMO INC.,
DHGATE;
and DOES 1 THROUGH 50

Defendants.

Case No. 3:22-cv-1768

JUDGE MALACHY E MANNION

JURY TRIAL DEMANDED

**FILED
SCRANTON**

DEC 05 2023

PER 
DEPUTY CLERK

PLAINTIFF'S MOTION FOR THE ENTRY OF DEFAULT JUDGMENT

NOW COMES the Plaintiff David J. Catanzaro Pro Se and submits this Motion for Default Judgment as under:

A. STANDARD TO REVIEW THE PLEADINGS OF PRO SE LITIGANTS

1. That the Plaintiff is a pro se litigant and has not engaged an attorney for further proceedings in this case. Thus, as far as the pleading standard of Pro Se litigants is concerned, a Pro Se litigant is always entitled to a less stringent view by the Honorable Superior Courts. Pro Se litigants are not supposed to be jurists; hence their pleadings are entitled to a kind and lenient standard of review by the courts. This is held time and again in the judgments of the apex courts, some of which are quoted as under:

“Plaintiff is pursuing his claim pro se. As such, his pleadings are held to a less stringent standard than those of an attorney. *See Tannenbaum v. United States*, 148 F.3d 1262, 1263 (11th Cir.1998).”

“The Supreme Court has instructed federal courts to liberally construe the ‘in artful pleading’ of pro se litigants. *Eldridge v. Block*, 832 F.2d 1132,1137 (9th Cir. 1987).”

A pro se pleading is held to a less stringent standard than more formal pleadings drafted by lawyers. *Estelle v. Gamble*, 429 U.S. 97, 106, 97 S. Ct. 285, 50 L. Ed. 2d 251 (1976)”.

2. Therefore, in light of the above-mentioned judgments, the Plaintiff as a Pro Se litigant, is entitled to a lenient review of his pleadings and seeks the kind favor of this honorable court.

B. STATEMENT OF FACTS

3. That the plaintiff is before this honorable court to submit his assertions against the violation and infringement of his Patent Rights and demands his remedies as prayed in his docketed Third Amended Complaint (deemed Second Amended Complaint by this Honorable Court).

4. That the Plaintiff is the real owner of United States Patent No.7,653,959B1 (the “959 patent”), entitled “Article Assembly,” that issued on February 2, 2010 and expired on December 30, 2016. Under section 286 of the patent act, Plaintiff has the sole right to a six year look back to sue for infringement of the said patent, allowing Plaintiff from the day the original complaint was filed on November 4, 2022 up-to December 30, 2022 to make a valid claim.

5. That the “959 patent is a continuation of U.S. Patent No.6,026,532 (the “532 patent”) which was assigned to the Church & Dwight Co. on February 28, 2011, as part of a settlement agreement during a patent infringement lawsuit titled as: David Catanzaro vs. Procter & Gamble Co. et al.

6. That the ‘959 patent contained a Terminal Disclaimer whereby the Disclaimer stated that joint ownership of the ‘532 and ‘959 patent was required for the ‘959 patent to be enforceable.

7. That Church & Dwight assigned the ‘532 patent back to Plaintiff on August 31, 2016 (The Assignment effective date). The Plaintiff has attached all relevant documents with his complaint. And has the full right to commence this legal action.

8. However, the Defendants are transacting business in strict violation of Plaintiff's Patent Rights related to the '959 patent, without seeking a license or permission from plaintiff. Defendants have infringed, induced others to infringe, and/or contributorily infringed, literally or under the doctrine of equivalents, one or more claims of the '959 patent. Defendants did so by manufacturing, having manufactured, importing, using, offering for sale and/or selling products that embody and/or practice the patented invention, known generally as, but not limited to "Solar Dancers," Solar Dancing Figurines," "Solar Dancing Toys," "Christmas Sunny Jigglers," "Stocking stuffers Solar Dancer" "Solar Bobble Heads" Solar Dancing Animals" and assorted product lines.

9. At this time, Plaintiff does not know all the true Identifying names of all infringing products. However, he intends to submit them as soon as he gets their details.

10. That the Defendants have committed acts of infringement by offering for sale and selling the Solar Dancers, Solar Dancing Figurines, Solar Dancing Toys and/or Christmas Sunny Jigglers, Stocking stuffers Solar Dancers and Solar Bobble Heads, Solar Dancing Animals and assorted products. Thus the Plaintiff seeks damages for patent infringement against Defendants for the maximum period of time permitted by law.

11. That the plaintiff is entitled to seek remedies provided to him against the above stated Patent Infringements or as considered just and proper by this court and to proceed with a jury trial.

12. However, despite timely service of process, the following Defendants:

- a. ALIEXPRESS (Parent company ALIBABA GROUP was served complaint)
- b. USIMPRINTS
- c. PRICE US WHOLESALE
- d. WHOLESALE IN MOTON GROUP INC.
- e. ANYPROMO INC.
- f. DHGATE

never filed any response or responsive pleadings. Therefore, the Plaintiff is filing this motion to seek a Default judgment against all of the above defendants or to seek a summary judgment in the alternative.

PLAINTIFF'S ARGUMENTS TO SEEK DEFAULT JUDGMENT.

13. As shown by the proofs of service filed by plaintiff with this motion (as attached **Exhibit "A"**), the above-named Defendants were properly served pursuant to the Federal Rules of Civil Procedure.

14. That the applicable time limit for the above-named Defendants to appear or otherwise respond to the above titled lawsuit/ civil action under the Federal Rules of Civil Procedure has already expired, but named Defendants never bothered to appear before this honorable court to file their replies or respond to the plaintiff's complaint. For the kind perusal of this honorable court, the relevant provisions of The Federal Rules of Civil Procedure are narrated as under:

"Rule 12. Defenses and Objections:

(a) **TIME TO SERVE A RESPONSIVE PLEADING.** (1) In General. Unless another time is specified by this rule or a federal statute, the time for serving a responsive pleading is as follows:

(A) A defendant must serve an answer: (i) within 21 days after being served with the summons and complaint; or (ii) if it has timely waived service under Rule 4(d), within 60 days after the request for a waiver was sent, or within 90 days after it was sent to the defendant outside any judicial district of the United States.

(B) A party must serve an answer to a counterclaim or crossclaim within 21 days after being served with the pleading that states the counterclaim or crossclaim.

(C) A party must serve a reply to an answer within 21 days after being served with an order to reply, unless the order specifies a different time.

Rule 55. Default; Default Judgment

(a) Entering a Default. When a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk must enter the party's default.

(b) Entering a Default Judgment.

(1) *By the Clerk.* If the plaintiff's claim is for a sum certain or a sum that can be made certain by computation, the clerk—on the plaintiff's request, with an affidavit showing the amount due—must enter judgment for that amount and costs against a defendant who has been defaulted for not appearing and who is neither a minor nor an incompetent person.

(2) *By the Court.* In all other cases, the party must apply to the court for a default judgment. A default judgment may be entered against a minor or incompetent person only if represented by a general guardian, conservator, or other like fiduciary who has appeared. If the party against whom a default judgment is sought has appeared

personally or by a representative, that party or its representative must be served with written notice of the application at least 7 days before the hearing. The court may conduct hearings or make referrals—preserving any federal statutory right to a jury trial—when, to enter or effectuate judgment, it needs to:

- (A) conduct an accounting;
- (B) determine the amount of damages;
- (C) establish the truth of any allegation by evidence; or
- (D) investigate any other matter.

15. That the above mentioned defendants have failed to plead or otherwise respond to the plaintiff's complaint in a timely manner as provided in the above referred provision and their conduct was in grave disregard of the orders of this honorable court thus this honorable court should enter a Default/Summary judgment in plaintiff's favor and against the defendants as the time period provided by the Federal Rules of Civil Procedure has already elapsed.

16. That the plaintiff has come before this honorable court with clean hands and he always abides by the orders of this honorable court. Plaintiff further sent the Defendants a 'Notice of Intent to File Motion for Default Judgment' specifically informing them to "...take prompt action within 10 days of the issuance of this letter" and that "it is imperative that you seek counsel to understand the ramifications of a Default Judgment..." among other statements of Fact. Please refer to attached **EXSIBIT "B"** which includes the following for each Defendant:

- a. A Notice of Intent to File Motion for Default Judgment letter
- b. A Certified Mail Receipt which includes a stamp date along with tracking
- c. A picture of each Envelope including same tracking number that's on the Certified Mail Receipt further including each defendants name and address.

Despite being served more than four and five months ago (as proof provided in **EXSIBIT "A"**) and despite the fact the defendants received a certified letter of Notice of Intent to File a Motion for Default Judgment more than 10 days ago, (as proof provided in **EXSIBIT "B"**) defendants continue to NOT take the plaintiff's complaint serious along with disregarding this Honorable Court and The Federal Rules of Civil Procedure. Thus, the plaintiff is entitled to a Default judgment or a Summary judgment in the alternative.

17. That this honorable court can peruse the history and timeline of this lawsuit to evaluate the applicable damages and to have a tentative assessment for the costs and damages as pleaded by the plaintiff in his lawsuit complaint.

18. That the plaintiff is ready to provide any further assistance to this honorable court to determine his remedies.

19. That the plaintiff has incurred a lot of expenses to pursue his legal rights and he was always before this honorable court to assist but the conduct and manner of the defendants has disregarded him. Therefore, Plaintiff requests for the entry of a Summary judgment or a Default judgment against the defendants.

20. That this request is based on the attached Declaration of Plaintiff.

SUBMISSION AND PRAYERS:

Therefore, in light of the above mentioned facts and circumstances, it is submitted

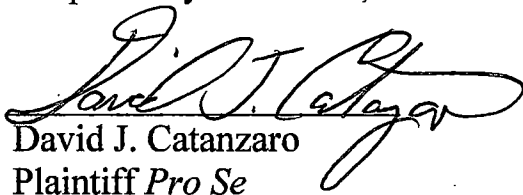
before this honorable court to:

- i. Please enter a judgment of default of the defendants (ALIEXPRESS/ALIBABA GROUP; DHGATE; USIMPRINTS; ANYPROMO INC.; PRICE US WHOLESALE and WHOLESALE IN MOTON GROUP INC.) as they never bothered to honor the orders/process of this honorable court.
- ii. Please enter a Summary judgment against defendants (ALIEXPRESS/ALIBABA GROUP; DHGATE; USIMPRINTS; ANYPROMO INC.; PRICE US WHOLESALE and WHOLESALE IN MOTON GROUP INC.) as they never bothered to honor the orders of this honorable court and the plaintiff has been entitled to this relief.
- iii. Please pass a Default judgment in the favor of the plaintiff while accepting all of his prayers/submissions in the Third Amended Complaint.
- iv. Please grant the plaintiff punitive damages amounting to \$1 Million dollars.
- v. Please grant the plaintiff with such amount of consecutive damages and costs to amicably compensate him against the wrongful acts of the defendants.
- vi. Please grant the plaintiff with legal costs and fees amounting to \$10,000.
- vii. Please grant any other relief which this honorable court deems appropriate.

Dated: December 5, 2023

Respectfully submitted,

By:


David J. Catanzaro
Plaintiff *Pro Se*

286 Upper Powderly Street
Carbondale, PA 18407

Phone: (570) 936-9262

E-mail: davidjosephus@aol.com

**IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA**

DAVID J. CATANZARO,

Plaintiff,

VS.

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USIMPRINTS,
STAPLES PROMOTIONAL PRODUCTS,
RAKUTEN AMERICAS,
PRICE US WHOLESALE,
BONANZA.COM, INC.,
WHOLESALE IN MOTION GROUP, INC.,
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and DOES 1 THROUGH 50

Defendants.

Case No. 3:22-cv-1768

JUDGE MALACHY E MANNION

JURY TRIAL DEMANDED

DECLARATION OF PLAINTIFF DAVID J. CATANZARO

I, **DAVID J. CATANZARO** (Pro Se Plaintiff), declare as follows:


DECLARATION:

I am the Pro Se Plaintiff in this action. I am over the age of 18 years. I have personal knowledge of the facts contained in this declaration, and if called as a witness could and would testify competently to the facts as stated herein:

1. Defendants were served as provided in the Federal Code of Civil Procedure and as shown by the proof of service filed with the court. True and correct copies of which are attached hereto as **Exhibit "A"** and incorporated herein by reference.
2. Under Federal Rules of Civil Procedure, Defendants were required to plead or otherwise respond to the complaint by the plaintiff but they never bothered to do so. The time to plead or otherwise respond to the complaint has not been extended by any agreement of the parties or any order of the Court.
3. Defendants have failed to serve or file a pleading or otherwise respond to the complaint. The applicable time limit for responding to the complaint has expired.
4. Defendants were served a 'Notice of Intention to Seek Default Judgment.' The notice was served after the date on which the answer to the complaint was due and at least 10 days prior to the filing of this motion, attached hereto as **Exhibit "B"**.
5. Defendants are not minors or incompetent persons.
6. Defendants are not currently in the military service, and therefore the Service members Civil Relief Act is not applicable.

I declare under penalty of perjury under the laws of the State of Pennsylvania and the United States of America that the foregoing is true and correct and that this declaration is executed on December 5, 2023, at Carbondale, Pennsylvania.

Dated: December 5, 2023

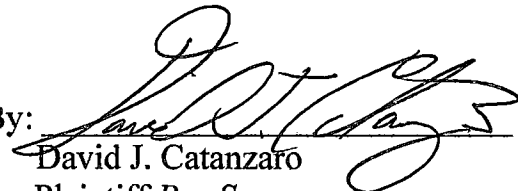
By: 
David J. Catanzaro
Plaintiff *Pro Se*
286 Upper Powderly Street
Carbondale, PA 18407
Phone: (570) 936-9262
E-mail: davidjosephus@aol.com

CERTIFICATE OF SERVICE

I, **DAVID J. CATANZARO**, hereby certify that on this 5th day of December, 2023, Defendants were served a 'Notice of Intention to Seek Default Judgment.' And that the notice was served after the date on which the answer to the complaint was due and at least 10 days prior to the filing of this motion The Notice of Intention to Seek Default Judgment was served by Certified Mail as denoted in **Exhibit "B"** of this Motion.

Dated: December 5, 2023

By:

A handwritten signature in black ink, appearing to read 'David J. Catanzaro', is written over a horizontal line.

David J. Catanzaro

Plaintiff *Pro Se*

286 Upper Powderly Street

Carbondale, PA 18407

Phone: (570) 936-9262

E-mail: davidjosephus@aol.com

CERTIFICATE OF SERVICE

I, **DAVID J. CATANZARO**, hereby certify that on this 5th day of December, 2023, a true and correct copy of the foregoing was filed with the Clerk through the Court electronically. Notice of this filing will be sent to all parties disclosed herein by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. Additionally, a copy of this filing was served on the following defendants via US Mail.

ALIEXPRESS / ALIBABA GROUP
400S El Camino Real # 400, San Mateo,
San Mateo, CA 94402

USIMPRINTS
200 E Main St Suite 200-17
Franklin, TN 37064

PRICE US WHOLESALE
2240 East 17th Street
Brooklyn, NY 11229

WHOLESALE IN MOTON GROUP INC.
2240 East 17th St.
Brooklyn, NY 11229

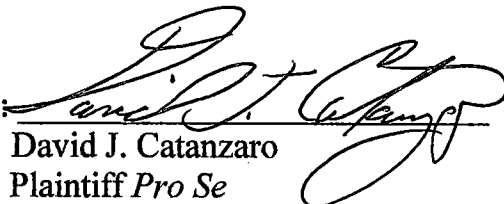
ANYPROMO INC.
1511 East Holt Boulevard
Ontario, CA 91764

DHA GATE
381 Brea Canyon Road
Walnut, CA 91789

Non Responsive Defendants

Dated: December 5, 2023

By:



David J. Catanzaro
Plaintiff *Pro Se*

286 Upper Powderly Street
Carbondale, PA 18407

Phone: (570) 936-9262

E-mail: davidjosephus@aol.com